

<b>RONALD THOMAS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 230,756
<b>BUTLER TRANSPORTATION COMPANY</b>	)	
Respondent	)	
AND	)	
	)	
<b>KANSAS TRUCKERS RISK MGMT GROUP</b>	)	
Insurance Carrier	)	

Claimant alleges that he suffered injury to his shoulder and to a growth on his neck in an altercation which occurred at the time he was terminated from his employment with respondent. The first preliminary hearing was held in this case on March 26, 1998, and following that hearing the ALJ denied claimant's application for preliminary benefits. On appeal, the Board affirmed that decision. Specifically, the Board found that claimant had failed to prove that he suffered injuries from any alleged altercation. Even though one of

the physicians showed a history of a shoulder injury from that altercation, the Board examined conflicting evidence about the nature of the altercation and concluded that claimant had not proven the altercation had caused any injury.

At the second preliminary hearing, held on October 15, 1998, claimant produced photographs of a torn shirt, claimant testified that one of the witnesses from the previous hearing did not observe the events, and claimant produced some records from a chiropractor suggesting that some of the injuries were related to the altercation.

Without suggesting that the new evidence makes claimant's claim significantly more convincing, the Appeals Board concludes that the order by the ALJ does not exceed his jurisdiction. On appeal from a preliminary hearing, the Board's authority is limited to review of allegations that the order exceeds the jurisdiction of the ALJ. In this case, the ALJ did not order payment of temporary total disability or payment of medical benefits. Instead, he ordered a medical examination to assist his determination of the issues. K.S.A. 44-516 authorizes appointment of an independent medical examiner "[i]n case of a dispute as to the injury . . . ." On previous occasions, the Board has held, and the Board does here hold, that this statute allows an order for an independent medical examiner to assist in the determination of whether an injury has occurred as alleged.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler on October 27, 1998, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1998.

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
J. Scott Gordon, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director